

**SPECIAL NOTICE REGARDING
GRIGGS AND WALNUT GROUND WATER PLUME SUPERFUND SITE
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
SETTLEMENT OPPORTUNITY**

This Special Notice is from the U.S. Environmental Protection Agency (EPA). This notice says that the City of Las Cruces (in the rest of this notice, the City of Las Cruces is referred to as "you") may be liable for the costs of the cleanup of hazardous substances released into the environment at the Griggs and Walnut Ground Water Plume Superfund Site (the "Site") which is located in the City of Las Cruces, Doña Ana County, New Mexico. The Site is described on the map that is attached to the draft Administrative Order on Consent (AOC) which is enclosed with this notice.

This notice provides you with information in five categories:

1. First, this notice tells you that you may be responsible for the cost of the cleanup of tetrachloroethene which is also known as perchloroethylene or PCE at the Site. The law known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) says that persons are responsible for cost of the cleanup of hazardous substances in certain cases. CERCLA is also called Superfund.
2. Second, this notice explains that we are not, at this time, asking for a settlement to resolve EPA's claims for costs that EPA has paid at the Site, although we may do so in the future.
3. Third, this notifies you that a 60-day period of formal negotiations with the EPA regarding the Site automatically begins October 12, 2004. This notice asks you to pay certain costs and to finance, or perform, a Remedial Investigation and Feasibility Study (RI/FS) regarding the hazardous substance contamination on the Site, under a settlement agreement with EPA. The purpose of the Remedial Investigation is to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release, or threatened release, of hazardous substances, pollutants, or contaminants, at or from the Site. The purpose of the Feasibility Study is to determine and evaluate alternatives for remedial action to prevent, mitigate, or otherwise respond to, or remedy, any release, or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.
4. Fourth, this notice requests that you respond within 60 days from October 12, 2004, with a good-faith offer to conduct or finance the RI/FS, and to pay future response costs at the Site. We also encourage you to contact Doña Ana County, the other Potentially Responsible Party (PRP) we have identified, to form a steering committee responsible for expediting the settlement process.

5. Fifth, this notice explains that EPA will consider your ability to pay in determining an appropriate settlement amount.

BACKGROUND

Ground water used within the eastern portion of the City of Las Cruces for municipal drinking water supply and irrigation has been contaminated with PCE. PCE, a chlorinated solvent, causes cancer in laboratory animals and is a potential human carcinogen. PCE has been used in the United States since the 1930's. Releases of PCE into the environment are documented at locations throughout the U.S., and are generally associated with past dry-cleaning operations, past parts-cleaning operations, or past disposal of waste solvent.

The PCE contamination on the Site was first identified during the period 1993 to 1995 in four of the City's municipal drinking water supply wells in the vicinity of Griggs Avenue and Walnut Street as a result of monitoring required by the Safe Drinking Water Act. The municipal supply wells in the eastern well field obtain water from the Santa Fe Group aquifer, a ground water reservoir within the Mesilla Bolson. The four affected municipal supply wells have become the subject of ongoing investigations initiated by the New Mexico Environment Department (NMED) and continued by the EPA. As a result of these investigations, PCE has been detected in soil vapor in the unsaturated zone above the affected ground water, and in ground water at depths of up to 635 feet below ground surface. The Site was added to EPA's National Priorities List of the Superfund Program on June 14, 2001 (66 Fed. Reg. 32235 [(June 14, 2001)]).

The Site, located in Las Cruces, includes the area containing the contaminated ground water plume. The Site is estimated to extend east to near Interstate 25, northwest to about Fir Avenue (west of Solano Drive), north to about East Hadley Avenue, and south to about East Griggs Avenue. On the surface, the Site measures at least 9,750 feet by 2,250 feet. The Site also includes all suitable areas in very close proximity to the contamination that are necessary for the implementation of the response action to address the contamination.

In order to determine where the PCE might have been released into the environment on the Site, EPA, in 2003, undertook an investigation of the Site. The investigation included three primary components. One component was the collection of information related to current and historical land uses in the vicinity of the Site that could have resulted in the release of PCE. The second component was a field investigation that involved the collection and analyses of soil vapor and ground water samples to evaluate where releases could have actually occurred. The third component was more limited in nature, but was intended to establish the basis for the future development of the RI/FS. This third component sought to preliminarily characterize the nature and extent of the contamination. (You have been provided with a copy of EPA's report regarding its investigation of PCE contamination on the Site.)

I. NOTICE THAT YOU MAY BE LIABLE

CERCLA identifies four types of persons that are liable for paying the EPA to clean up hazardous substances that have been released:

1. Persons who now own or operate the place where the hazardous substance was released;
2. Persons who once owned or operated the place where the hazardous substance has been released during the time when the hazardous substance was disposed of;
3. Persons who arranged for disposal or treatment of hazardous substances at the place where the hazardous substance has been released; or
4. Persons who selected the place where the hazardous substance has been released as a disposal site and transported the hazardous substances to that place.

You may want to read the section of the CERCLA law which tells which persons are liable for the cost of cleaning up hazardous substances. CERCLA can be found in Title 42 of the United States Code (U.S.C.) in Sections 9601 through 9675. The part of CERCLA which tells about these responsible parties can be found at Section 9607 (42 U.S.C. § 9607), sometimes referred to as CERCLA Section 107. Definitions of terms used in CERCLA can be found in Section 9601.

Records which we have on hand indicate that you own PCE-contaminated land located near the intersection of Griggs Avenue and Walnut Street that once was the site of the Crawford Municipal Airport. Accordingly, you may be a potentially responsible party (PRP) under the Superfund law. The EPA invites you to take stock of the evidence, and to enter into the enclosed AOC for an RI/FS on the Site.

II. EPA HAS INCURRED APPROXIMATELY \$3.8 MILLION IN SITE RELATED COSTS

The EPA has paid for response actions at the Site. The EPA's costs are consistent with the CERCLA law, and the National Contingency Plan (NCP). The NCP includes the EPA's procedures for preparing and responding to releases of hazardous substances and can be found in the Code of Federal Regulations (CFR) at Title 40, Part 300. The EPA's costs include, without limitation, cleanup costs, investigative research and data gathering, site inspections and enforcement costs. As of May 31, 2004, the EPA has paid \$3,824,443.27 related to the Site. Under CERCLA Section 107, 42 U.S.C. § 9607, responsible parties are liable for the EPA's costs. As explained above, the EPA believes you are a responsible party. Accordingly, while we are not looking for a settlement regarding EPA's cost recovery claim at this point, we may do so in the future.

III. NEGOTIATION PERIOD AND MORATORIUM REGARDING CERTAIN ACTIVITY AT THE SITE

The EPA has determined that use of the special notice procedures specified in CERCLA Section 122(e), 42 U.S.C. § 9622(e), may facilitate a settlement between EPA and you. Therefore, pursuant to CERCLA Section 122, 42 U.S.C. § 9622, this notice establishes a 60-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, you and any other PRPs, are invited to negotiate a settlement agreement. The settlement will provide for you to: (1) **conduct or finance** the RI/FS activities required for the Site; and, (2) reimburse EPA for costs to be incurred in overseeing the PRPs' performance of the RI/FS. The 60-day negotiation period will begin formally on October 12, 2004.

If, by the end of the 60-day period, you provide EPA with a good faith offer to conduct or finance the RI/FS and to reimburse EPA for response costs to be incurred in overseeing the RI/FS, the 60-day negotiation moratorium will be extended an additional 30 days to conclude negotiations. If settlement is reached between EPA and you within the 90-day negotiation moratorium, the settlement will be embodied in an AOC to be issued by the Superfund Division Director, EPA Region 6.

Two draft AOCs, written specifically for the Site, and a draft Statement of Work (SOW) for the RI/FS activities are enclosed. One of the draft AOCs provides for the City and the County to undertake the RI/FS with EPA oversight. The SOW would be attached to this version, if it is used. The other draft AOC provides for the City and the County to fund EPA as it completes the RI/FS and uses no SOW. The second option has certain advantages. Since EPA just completed a vital ground water and soil vapor study to find the sources of PCE on the Site, EPA has almost enough data on hand to complete the Remedial Investigation. In addition, EPA has an environmental contractor fully familiar with the situation. Consequently, with your input, EPA could rapidly and efficiently complete the Remedial Investigation and move on to the Feasibility Study.

To expedite EPA's review of your good-faith offer, EPA recommends that you revise one of the draft AOCs, including the SOW if applicable, and mail it to EPA with the deleted portions lined through and your proposed language added in a distinctive manner. If you use WordPerfect (which is used by EPA), or other word processing software, please submit a redline/strikeout version of the AOC (and SOW if applicable). An electronic version of the draft AOC and SOW may be obtained from EPA Attorney Mr. James E. Costello at (214) 665-8045.

IV. PLEASE RESPOND WITH A GOOD-FAITH OFFER WITHIN 60 DAYS OF OCTOBER 12, 2004

Please use the enclosed draft AOCs (and draft SOW, if applicable) to assist you and the other PRPs in developing a good-faith offer for conducting the RI/FS and for reimbursing EPA for future oversight costs. In order for your proposal to be considered a good-faith offer, it must be in writing and it must include the following:

1. Your statement that you are willing to conduct or finance the RI/FS in a manner consistent with EPA's draft AOCs (and SOW, if applicable), which provides a sufficient basis for further negotiation.

2. A paragraph-by-paragraph response to EPA's draft AOCs (and SOW, if applicable). A redline/strikeout version of an AOC (and SOW, if applicable), as described above, is adequate for this purpose. In addition, please identify the changes which you consider to be major issues.

3. If you choose to conduct (rather than finance) the RI/FS, a demonstration that you are technically capable of carrying out the RI/FS, including the identification of the party or parties that may actually conduct the work, or a description of the process that you will use to select the party or parties.

4. A statement that you are willing to reimburse EPA for response costs to be incurred in overseeing the PRPs' performance of the RI/FS.

5. A demonstration that you are capable of financing the RI/FS (an annual financial report is sufficient).

8. The name, address, and phone number of the party or steering committee representative who will represent you and any other PRPs in negotiations, if applicable.

If EPA determines that a good faith offer has not been submitted within the 60-day period, EPA may, thereafter, terminate the negotiation moratorium period pursuant to Subsection 122(e)(4) of CERCLA, 42 U.S.C. § 9622(e)(4), and commence such response activities or enforcement actions as may be appropriate.

Finally, in keeping with the goal of reducing the time and expense of negotiations and to expedite settlements, please be certain to provide all proposed changes in your initial good faith offer, as the EPA may not entertain changes requested at a later date. Please mail, fax or email your good-faith offer to Remedial Project Manager Ms. Petra Sanchez at the following address:

Petra Sanchez
Remedial Project Manager (6SF-LT)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
(214) 665-6686
FAX (214) 665-6660
E-mail: sanchez.petra@epa.gov

To arrange a negotiation meeting with the EPA, please contact Ms. Sanchez at the telephone

number listed above. If you decide to meet with the EPA to negotiate, we encourage you to contact the other PRPs and form a steering committee so that you may work together in this matter. EPA has identified Doña Ana County, New Mexico, and the City of Las Cruces, New Mexico, as PRPs. The steering committee should represent all the PRPs. If you cannot form a steering committee, it would be helpful if each PRP would select one person to represent it. Your good-faith offer may be made by you alone or through a steering committee.

V. ABILITY TO PAY

In accordance with Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), EPA will review financial information that you submit in order to determine whether you have an inability or a limited ability to pay response costs incurred at the Site. As part of this review, EPA will take into consideration your overall financial condition and demonstrable constraints on your ability to raise revenue. Based upon the financial information that you may submit, EPA will determine whether you qualify for a reduction in settlement amount and/or an alternative payment method within the meaning of Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7).

ADMINISTRATIVE RECORD FILE

Pursuant to CERCLA § 113(k), 42 U.S.C. § 9613(k), EPA has established an administrative record file for the Site at the following location:

Thomas Branigan Memorial Library
200 East Picacho Avenue
Las Cruces, New Mexico
505-528-4000

The administrative record file contains documents that form the basis for EPA's response actions at the Site. The administrative record file is open to the public for inspection. Another copy of the administrative record file is available for review on the seventh floor of the EPA Region 6 offices and arrangements can be made to review it by calling (214) 665-2792 or (800) 533-3508.

The discussions of fact or law in this notice are meant to help you understand CERCLA and the EPA's actions at the Site. The discussions of fact and law are not final EPA positions on any matter discussed in this notice. If you have any questions regarding legal issues please call Mr. Costello.